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**OMBUDSMAN'S REPORT – CORRECTIONS DISCIPLINARY ACTION**

**Report.** The [Office of the Ombudsman](#) issued a [report](#) in February 2015 following its investigation of an offender's complaint regarding his discipline at the Fort Dodge Correctional Facility. The offender was disciplined for behavior that occurred on April 2, 2008, and the Administrative Law Judge (ALJ) found him guilty of assault, threats/intimidation, and verbal abuse. The offender received 180 days of disciplinary detention and 180 days loss of earned time. The offender filed an appeal with the warden the day after the disciplinary hearing; the appeal was denied. The offender then filed a complaint with the Office of the Ombudsman on May 9, 2008.

**Iowa Law.** The Office of the Ombudsman's report indicated Iowa Code section [904.505](#) sets the parameters for the use of force and disciplinary procedures. Iowa Code chapter [903A](#) governs the reduction of sentences, including the application of earned time. Under Iowa Code section [903A.3](#), offender disciplinary procedures, including the loss of earned time, are not contested cases under Iowa Code chapter [17A](#). Iowa Code section [903A.1](#) provides for appointment of independent administrative law judges in the Department of Corrections ([DOC](#)). Iowa Administrative Code [201 IAC](#) may also apply.

**Conclusions.** The Ombudsman's report concludes that the warden and ALJ violated due process and DOC policies in their sanctioning of the offender. See pages 37 – 38 of the report for a discussion of the five conclusions.

**Recommendations and DOC Response.** The Office of the Ombudsman's report included nine recommendations for the Department of Corrections (DOC):

- The offender's disciplinary case should be retroactively dismissed and expunged. The DOC refused.
- The DOC should consider reinstatement of the rule once used at the Iowa State Penitentiary that required expungement of disciplinary reports when substantial due process violations are discovered. The DOC disagreed that substantial due process violations occurred.
- Substantive procedural errors in disciplinary cases should be corrected through formal processes. The DOC disagreed that substantive procedural errors occurred.
- Staff misconduct should be considered as a mitigating factor in offender disciplinary hearings. The DOC indicated no staff misconduct occurred.
- Prison administrators are to investigate staff misconduct separate from offender disciplinary proceedings. The DOC indicated it has policies in place for investigations of alleged staff misconduct.
- The DOC should have a written policy that the ALJs are accountable to the General Counsel in Central Office, and not to prison administrators. The DOC stated the General Counsel is responsible for supervising the ALJs. This position is also responsible for Major Discipline Report Procedures Policy.
- Written policies should be in place that prohibit prison staff from discussing the offender's case before a hearing is held. The DOC disagreed with this recommendation, stating it was too broad, and cited Iowa Code section [903A.1](#). The published report modified this recommendation to prohibit ex parte communication with ALJs about the evidence and the sanctions to be considered.
- The DOC should have written policies governing the ALJs actions when prison staff discusses the offender's case before a disciplinary hearing is held. The DOC disagreed with this recommendation, stating that it is too broad, and indicated that offender disciplinary hearings are not subject to Iowa Code chapter [17A](#).
- The disciplinary policies should be amended to require staff to specify in disciplinary notices which classifications of rule violations are alleged. The DOC indicated the disciplinary notice provides the required due process in advising the offenders of what rules they violated. The DOC noted it had contacted the Office of the Attorney General for guidance in this response. Per the DOC, the

Attorney General's Office indicated that the DOC policies and procedures were followed correctly in accordance with due process.

**ALJ Duties in the DOC.** The DOC has five full-time ALJs assigned to the nine Institutions. Other staff at an Institution may be assigned to fill in for an ALJ. Hearings are conducted in person or by the use of Telejustice (video conferencing). These ALJs also:

- Review and decide disciplinary decisions that impact earned time loss in the Community-Based Corrections (CBC) District Departments' residential facilities.
- Provide due process for the Sex Offender Treatment Program (SOTP) within the Institutions.
  - Offenders required to participate in the SOTP have a right to a hearing.
  - Offenders that refuse or fail to participate in the SOTP are subject to loss of earned time. Any reduction of earned time triggers a due process hearing.

**Process Changes Since 2008.** According to the Office of the Ombudsman's report, the DOC made changes to their disciplinary policy during and since the Ombudsman's investigation of this case:

- The maximum loss of earned time for a Class B disciplinary offense was increased from 90 days to 180 days.
- ALJs no longer need to cite mitigating circumstances in their decisions.
- Automatic review by the warden of all disciplinary decisions was eliminated.

**Additional DOC Information.** The DOC indicated:

- A comprehensive LEAN project of the entire DOC Offender Discipline process was undertaken by the DOC, the CBC District Departments, and the Ombudsman's corrections specialist. LEAN is a system of continuous improvement in quality, technology, processes, company culture, productivity, safety, and leadership.
- As a result of the collaboration with the Ombudsman Office in 2008, that Office has been teaching about their Office and its functions to all new DOC employees during orientation training.
- All full-time DOC ALJs are now licensed attorneys and report directly to the DOC General Counsel.
- The DOC began the process of having the ALJs work outside of the prisons and use the Telejustice system to conduct offender discipline hearings.
- The DOC now posts certain policies on its website at: <http://www.doc.state.ia.us/Policies>. Several policy chapters are available on this interactive website. The disciplinary policies may be displayed by selecting the policy chapter "Institutional Operations" and choosing the Sub Chapter "Rules and Discipline."

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